IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR (C.G.)

WRIT PETITION NO. 2161 /2004

PETITIONER

1. Machhua Swa Sahayata Samuh, Sirsakhurd, through : Purushottam Dhimar, resident of village Sirsakhurd, Tehsil and Distt. Durg (CG)

2. Posan Swa Sahayata Samuh, Sirsakhurd, through : Shri Poshan Dhimar, resident of Sirsakhurd, Tehsil and Distt. Durgt (CG)

VERSUS

RESPONDENTS

1. State of Chhattisgarh, through, the Secretary, Department of Fish, Dau Kalyan Singh Bhawan, Raipur, Chhattisgarh.

2. Saaja Rawoot Dewalay Mattashya Udyog, Sahkari Samiti, Resident of Sirsakhurd, The. And Distt. Durg (C.G.)

3. Sarpanch, Village Panchayat – Sirsakhurd, Vikas Khand – Durg, Distt. Durg (C.G.)

4. The Director, Panchayat, Chhattisgarh, Raipur (CG)

5. The Chief Executive Officer, Janpad Panchayat – Durg, Distt. Durg (Chhattisgarh)

6. The Collector, Distt. Durg (CG)

7. Commissioner, Raipur Division, Raipur (Chhattisgarh)

8. The Additional Collector, Durg (Chhattisgarh)

9. The Gram Panchayat, through : the Sarpanch, Sirsakhurd, Sirsakhurd, Distt. Durg (CG)

10. Santosh Kumar Sahu, Up Sarpanch,

11. Agrahij Ram, Panch,

12. Dhaneeram Sahu, Panch

13. Toranlal Sarve, Panch

14. Sabhanabai Apanch

15. Pramila Sahu, Panch

16. Rampyari, Panch

17. Kheduram Yadav, Panch

18. Bataram Yadav, Panch

19. Narendra Kumar Panch

20. Alakhram Panch

21. Punitram Sahu, Panch

22. Rupesh Kumar Panch

Sl.No. 10 to 22 are of village Panchayat Sirsakhurd, Distt. Durtg (Chhattisgarh)

WRIT PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA, 1950 FOR ISSUANCE OF WRIT IN THE NATURE OF CERTIORARI, MANDAMUS ETC. AND FOR APPROPRIATE ORDER / ORDERS, DIRECTION / DIRECTIONS.

01) PARTICULARS OF THE PETITIONER:

As per the cause title.

02) PARTICULARS OF THE RESPONDENTS:

As per the cause title.

03) PARTICULAR OF ORDERS AGAINST WHICH THE PRESENT PETITION IS BEING MADE:

(100)

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No.2161 of 2004

Machhuwa Swa Sahayata Samuh, Sirsakhurd and another

- Versus -

State of Chhattisgarh and others

POST FOR ORDER ON 3rd DECEMBER, 2004

Sd/-
L.C.BHADOO
Judge

(101)

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No.2161 of 2004

Machhuwa Swa Sahayata Samuh, Sirsakhurd and another

- Versus -

State of Chhattisgarh and others

Present: -

Smt. Fouzia Mirza, Advocate:	For the petitioners.
Shri Sumesh Bajaj, Deputy Govt. Advocate:	For the State/respondents No.1, 4 to 8.
Shri H. B. Agrawal, with Shri Ajay Shrivastava, Advocates:	For respondents No.2, 3 & 9.

O R D E R

(Passed on 3rd December, 2004)

L.C. BHADOO, J.

1. The instant writ petition has been filed by the petitioners under Article 226/227 of the Constitution of India, questioning the correctness and legality of the order Annexure P-1 passed by the Director, Panchayat, Chhattisgarh, Raipur, whereby the learned Director, Panchayat, has quashed the order dated 28.1.2003 passed by the Additional Collector, Durg, whereby he dismissed the revision filed against the decision of the Gram Panchayat, whereby the fishing rights were given to the petitioner in the two ponds mentioned in the order.

2. Brief facts leading to filing of this writ petition are that Gram Panchayat: Sirsakhurd, Tehsil & District: Durg, invited applications for grant of 10 years' lease for fishing rights in various ponds situated under the jurisdiction of the said Panchayat. In all, 58 applications were received and those applications were divided into three groups. Respondent No.2 herein was granted lease of pond admeasuring 8.46 hectares, whereas, petitioner No.1 Samuh was granted lease of pond admeasuring 6.20 hectares, and petitioner No.2 Samuh was granted lease of pond admeasuring 4.07 hectares. The said

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decision was taken by the Gram Sabha vide its resolution dated 22.9.2001. Being aggrieved by the said order, respondent No.2 filed an appeal before the Additional Collector, and in turn, the Additional Collector vide its order dated 12.12.2001 dismissed the appeal and affirmed the decision of the Gram Sabha dated 22.9.2001. Again aggrieved by that order respondent No.2 preferred a revision before the Court of the then Commissioner, Raipur, and the Commissioner vide its order dated 6.8.2002 held that there is no provision under the Panchayat Act for affirming the decision of the Gram Panchayat and there is a provision of appeal and revision against the decision of the Gram Panchayat, and Sections 84, 85 & 86 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993, are concerning the Gram Panchayat not the Gram Sabha. Ultimately, the order dated 12.12.2001 was set aside by the Commissioner and thereafter, the Gram Panchayat again started proceedings for grant of lease of the ponds for fishing rights and vide its resolution dated 18.10.2002 the Gram Panchayat again gave the two ponds on ten years' lease to the same persons. Being aggrieved by the said resolution of the Gram Panchayat, respondent No.2 filed a revision before the Additional Collector and the Additional Collector vide its order dated 28.1.2003 dismissed the revision holding that the resolution of the Gram Panchayat dated 18.10.2002 is valid. Being aggrieved by the said order of the Additional Collector, respondent No.2 filed revision before the Director, Panchayat, Chhattisgarh, Raipur, who by the impugned order quashed the order of the Additional Collector and the Gram Panchayat. Being aggrieved by that, the petitioners have preferred this writ petition praying therein that the decision of the Gram Panchayat was in accordance with the circulars issued by the Government from time to time as the Gram Panchayat divided all the applications into three groups; respondent No.2 being a registered Society lease of a pond admeasuring area 8.46 hectares was granted and the lease of other two ponds was granted to the petitioners.

3. On the other hand, return has been filed on behalf of respondent No.2 in which it has been mentioned that as per the Government order dated 15.11.1999, the ponds which were of more than one

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hectare are to be given on lease only to the registered Co-operative Society and the petitioners are not entitled, therefore, the order of allotment in favour of the petitioners is illegal, as such, the impugned order is in conformity with the Government orders and legal.

4. Having heard learned counsel for the parties, I have perused the relevant circulars. The Fisheries Department of the erstwhile State of Madhya Pradesh issued order Annexure R-2-1 dated 15.11.1999 in partial modification of the earlier order dated 31st October, 1996, and para 2-2-1 of the same envisages that where the Sehkari Samiti does not exist and where it is impossible to constitute a Sehkari Samiti of sufficient number of persons, in that case, the ponds/tanks can be given to the self-help groups for fishing rights. In the last it has been mentioned that in the following manner the ponds upto one hectare can be given to any person, and the ponds admeasuring area of more than one hectare should be allotted in the following priority viz., (1) the Machhuwa Sehkari Samiti; (2) the Samuh; and (3) the self-help group. In the note portion, it has been mentioned that in case of non-availability of Machhuwa Sehkari Samiti and in order to constitute the same if sufficient members are not available, then the pond can be given on lease to the self-help group, but before giving the pond to self-help group on lease to such persons, the Fisheries Department will obtain a certificate from the District Officer that no Co-operative Society is available in the area, and further that must be certified by the Chief Executive Officer of the District Panchayat. Therefore, it is evident from the above Government order that in the first instance, the ponds, the area of which are more than one hectare can only be allotted to the Co-operative Societies, no other persons or self-help groups are entitled for the same. The ponds can be given to them on lease only when no Co-operative Society is available, that too after obtaining non-availability certificate from the District Officer, same must also be certified by the Chief Executive Officer of the Panchayat.

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3. In view of the above guidelines/order of the Government, the petitioners were not entitled for lease of the pond, the area of which was 6.92 hectares and 4.07 hectares. Learned counsel for the petitioners is not able to point out any illegality or infirmity in the impugned order passed by the Director, Panchayat, Raipur, as such the petition is liable to be dismissed and it is accordingly dismissed.

6. However, during the course of arguments, learned counsel for the petitioners submitted that the petitioners have already put the seeds of fish in the ponds and those fishes are ripe for fishing; if the possession of the ponds is taken from petitioners then they will suffer loss without any fault on their part, because they are in the possession of the ponds in pursuance of the decision of the Panchayat. The request of the counsel for the petitioners appears to be fair and reasonable, therefore, the respondents are directed to allow the petitioners for fishing in the ponds for a period of 15 days with effect from 6.12.2004. It is made clear that no further extension will be granted.

7. Parties are directed to bear their own cost.

Sd/-
L.C.BHADOO
Judge

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